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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA  
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12 FEDERAL INSURANCE COMPANY, an ) 3:04-cv-0639-HDM-RAM  
13 Indiana Corporation; and SOUTHERN )  
14 WINE AND SPIRITS OF AMERICA, )  
15 INC., a Florida Corporation, ) ORDER  
16 Plaintiffs, )  
17 v. )  
18 AMERICAN HARDWARE MUTUAL )  
19 INSURANCE COMPANY, an Ohio )  
20 Corporation, )  
21 Defendant.  
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23 Pursuant to Nevada Rule of Appellate Procedure 5, the court  
24 certifies the following question to the Nevada Supreme Court:

25 **I. Question of Law**

26 Whether, under Nevada law, an additional insured endorsement  
27 provides coverage for an injury caused by the sole independent  
28 negligence of the additional insured?

29 **II. Statement of Proposed Facts**

30 On October 1, 2001, American Hardware Mutual Insurance

1 Company ("American Hardware") issued an insurance policy to Clark  
2 Lift West, Inc. ("Clark Lift") of Sacramento, California. The  
3 insurance policy was in full force and effect on October 12, 2001.  
4 As part of the policy, American Hardware issued an Additional  
5 Insured Endorsement which named Southern Wine & Spirits of America,  
6 Inc. as an additional insured.

7 On January 16, 2004, Charles K. Pierce filed a personal injury  
8 lawsuit in state court, naming Southern Wine & Spirits of America,  
9 Inc. ("Southern Wine"), as one of the defendants. At the time of  
10 his injury, Mr. Pierce was acting within the course and scope of  
11 his employment. He was performing repair work on a conveyor motor  
12 belt system on the premises of Southern Wine.

13 Southern Wine and its liability carrier, Federal Insurance  
14 Company, tendered the defense to American Hardware, and American  
15 Hardware denied coverage. The parties have a dispute concerning  
16 whether Southern Wine is covered under the American Hardware  
17 Insurance policy for Mr. Pierce's accident.

### 18 **III. Names of Plaintiffs and Defendant**

19 Plaintiffs: Federal Insurance Company; Southern Wine &  
20 Spirits of America Inc.

21 Defendant: American Hardware Mutual Insurance Company

### 22 **IV. Names and Addresses of Counsel**

23 Plaintiffs: Thierry V. Barkley, Esq.  
24 Thorndal, Armstrong, Delk, Balkenbush, Eisinger  
6590 S. McCarron Blvd, Ste. B  
Reno, Nevada 89509

25 Defendant: Robert L. Eisenberg, Esq.  
26 Lemons, Grundy & Eisenberg  
6005 Plumas Street, Suite 300  
27 Reno, Nevada 89509  
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1 **V. Other Relevant Matters**

2 The United States District Court for the District of Nevada  
3 requests that the Nevada Supreme Court answer this certified  
4 question in accordance with Nevada Rule of Appellate Procedure 5.  
5 The question appears to be determinative of the case pending before  
6 this court and there appears to be no definitive controlling  
7 precedent in the published opinions of the Nevada Supreme Court.

8 It is so ordered.

9 DATED: This 10th day of November, 2005.

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UNITED STATES DISTRICT JUDGE  
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